

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2704 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BALVANTSINH V SOLANKI

Versus

STATE OF GUJARAT

Appearance:

MR MG NAGARKAR for Petitioner

MR SP HASURKAR for Respondent No. 1

GOVERNMENT PLEADER for Respondent No. 2, 4, 5

NOTICE SERVED for Respondent No. 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 12/08/98

ORAL JUDGEMENT

RULE.

The petitioner, Balvantsinh V Solanki, aged 28 years, has approached this Court seeking direction for family pension for his sister-Chandrikaben aged 29 years. The father of Chandrikaben namely; Vaghajibhai Solanki, retired as a Primary School Teacher in Sipor Village on 31.10.1995. He died on 30.9.1996. The say of the petitioner is that Chandrikaben Solanki is unmarried and by birth she is mentally retarded and of unsound mind and therefore, she is entitled to family pension through

his/her guardian in accordance with the pension rules and circular No. NUT/1387/GOI/12-5-1, dated 6.7.1989.

2. Mr B K Patel, District Primary Education Officer, Mehsana has filed an affidavit. It is stated that the petitioner is required to obtain certificate of guardianship for payment of family pension to Chandrikaben Solanki. He has referred to G.R. dated 6.7.1989.

3. Mr M G Nagarkar, learned Advocate for the petitioner read before me the circular dated 18.8.1989. By the said circular, in case of mentally retarded person, the production of guardianship certificate from the Court has been dispensed with. Mr Nagarkar has invited my attention to letter dated 21.11.1997 of the Collector, Mehsana, wherein it is expressed that there is no necessity of guardianship certificate from the Court. He has also submitted that an enquiry was conducted and the papers were produced before the Collector. Be that as it may, there is no finding on the question of the genuineness of the petitioner as guardian of Chandrikaben Solanki.

4. From the aforesaid discussion, it is evident that the requirement of guardianship certificate from the Court of law has been dispensed with. However, there has to be some satisfaction with respect to the genuineness of the guardianship. In view of this, it will be appropriate if an enquiry is conducted with respect to the genuineness of the petitioner as guardian.

5. In view of the aforesaid, this Special Civil Application is partly allowed and following directions are given:

- (1) The Collector, Mehsana will coconduct an appropriate enquiry with respect to the genuineness of the guardianship claimed by the petitioner.
- (2) If the Collector certifies that the petitioner is genuine guardian of Chandrikaben, the respondent will consider the case of the petitioner for grant of family pension.
- (3) If the pension is granted, the same shall be subject to review once in two years. The Probation Officer will be directed to visit Chandrikaben Solanki, twice a year and submit a report to the District Primary Education Officer,

Mehsana. If it is found that the petitionr is misusing the family pension of Chandrikaben, it will be open for the District Primary Education Officer to direct payment of family pension to some other guardians.

Rule made absolute to the absolute extent.

....

msp.